SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1973

NO. 73-6155

RUSSELL R. LONG,

Petitioner,

versus

LEVI RAY HAIRE, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TABLE OF CONTENTS

Page

I. OPINIONS BELOW 1

II. QUESTIONS PRESENTED FOR REVIEW 1

III. STATEMENT OF THE CASE 2

IV. REASONS FOR DENYING THE WRIT 4

A. BY PERFORMING HIS DUTIES AS A SUPERIOR COURT JUDGE FOR MARICOPA COUNTY, ARIZONA, ACCORDING TO THE ARIZONA REVISED STATUTES AND TO THE ARIZONA RULES OF CIVIL PROCEDURE, JUDGE STRAND HAS NOT DENIED PETITIONER HIS CONSTITUTIONAL OR CIVIL RIGHTS 4

B. THE PETITION IS PRIMARILY CONCERNED WITH MATTERS NOT PROPERLY REVIEWABLE ON CERTIORARI SINCE IT ADDRESSES ITSELF TO APPELLATE PROCEDURE IN THE UNITED STATES CIRCUIT COURT OF APPEALS ... 6

V. CONCLUSION 8

APPENDIX A1
APPENDIX A2
APPENDIX A3
APPENDIX A4

TABLE OF CITATIONS

Page

Cases:

Blair v. Oesterlein Machine Co.,
275 U.S. 220 (1927) 8

Fay v. Nola,
372 U.S. 391 (1963) 7

McGoldrich v. Campagnie Generale
Transatlantique,
309 U.S. 430 (1940) 8

Pine Trustees v. Martin,
268 U.S. 458 (1925) 7

Ramsey v. United Mine Workers,
401 U.S. 302 (1971) 7

Walters v. City of St. Louis,
347 U.S. 231 (1954) 8

White River Lumber Co. v.
Arkansas ex rel. Applegate,
279 U.S. 692 (1929) 7

Yakus v. United States,
321 U.S. 414 (1944) 8

I.

OPINIONS BELOW

On March 26, 1973, the United States District Court for the District of Arizona granted Respondent Strand's motion for summary judgment on the ground that the complaint failed to state a claim over which the court had jurisdiction. (A. 1) The United States Circuit Court of Appeals for the Ninth Circuit dismissed Petitioner Long's appeal as frivolous. (A. 2) That judgment was entered and filed on August 20, 1973. (A. 3) On petition for rehearing, a panel of judges for the United States Court of Appeals for the Ninth Circuit voted to deny a rehearing and to reject the suggestion for rehearing en banc. (A. 4)

II.

QUESTIONS PRESENTED FOR REVIEW

Whether proper civil procedure according

to the Arizona Revised Statutes and the Rules of Civil Procedure promulgated by the Arizona Supreme Court were followed in Gammill v. Long so that Petitioner was afforded a fair trial.

III.

STATEMENT OF THE CASE

In 1967 Petitioner Long was charged with criminal assault in Maricopa County, Arizona for allegedly having caused injuries to a judge of the Arizona Court of Appeals and his wife. (R. 83) [Record on Appeal from the District Court of Arizona] During the resultant criminal prosecution, Mr. Long was defended by a member of the Phoenix firm of Lewis and Roca. The suit against Mr. Long was dismissed (R. 84) An action, Gammill v. Long, was brought against Mr. Long for fees for legal services, and judgment was rendered against him by jury verdict on June 21, 1972. (R. 19) That proceeding is the

basis of Mr. Long's suit against Judge Strand. Mr. Long contends that Judge Strand denied him his civil rights by following the Arizona Rules of Civil Procedure and pertinent Arizona statutes.

Mr. Long appealed the judgment against him for legal fees to the Arizona Court of Appeals, Division 1. His brief was determined to be unacceptable because it did not comply with the specifications for briefs set out in the rules promulgated by the Arizona Supreme Court. Mr. Long was given adequate time in which to supply the court with a conforming brief. (R. 44) He chose not to do so. On January 15, 1973, Mr. Long's appeal was dismissed. (R. 85)

While this matter was pending in the state courts on a petition for review to the Arizona Supreme Court (R. 87), Mr. Long filed an action in the United States District Court for the District of Arizona. (R. 1) On March 26, 1973, summary judgment was granted by the District

Court in favor of Judge Strand because the complaint failed to state any claim over which the District Court had jurisdiction. (A. 1) That order was affirmed by the United States Circuit Court of Appeals for the Ninth Circuit on a finding that the appeal was frivolous. (A. 2) The Ninth Circuit also denied a petition for rehearing and for a rehearing en banc. (A. 4)

IV.

REASONS FOR DENYING THE WRIT

A. BY PERFORMING HIS DUTIES AS A SUPERIOR COURT JUDGE FOR MARICOPA COUNTY, ARIZONA, ACCORDING TO THE ARIZONA REVISED STATUTES AND TO THE ARIZONA RULES OF CIVIL PROCEDURE, JUDGE STRAND HAS NOT DENIED PETITIONER HIS CONSTITUTIONAL OR CIVIL RIGHTS.

All of Mr. Long's appeals stem from the case of Gammill v. Long, an action for collection of legal fees. Each of Mr. Long's appeals involves two recurring themes: (1) that judges

have centered a conspiracy with attorneys in order to maintain a corner on the legal market. (See, e.g., Petition for Cert. pp. 3-4); and (2) that a judge has such a narrowly defined role that a jury must decide every procedural and substantive issue arising during the pleadings or trial. (See, e.g., Petition for Cert. p. 5) In viewing these contentions, it must be remembered that Mr. Long engaged an attorney to represent him in the original criminal trial against him; when the attorney managed to get the criminal action against Mr. Long dismissed, Mr. Long repudiated the attorney's fees owing. It must also be remembered that Mr. Long did receive a jury trial in Respondent Strand's courtroom and that the jury, not the judge, returned a verdict in favor of the plaintiff finding that Mr. Long did owe the attorney's fees.

B. THE PETITION IS PRIMARILY CONCERNED WITH MATTERS NOT PROPERLY REVIEWABLE ON CERTIORARI SINCE IT ADDRESSES ITSELF TO APPELLATE PROCEDURE IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Petitioner Long views the case he has brought before the United States Supreme Court as beginning from the time the case reached federal court. (Petition for Cert. pp. 2-3) The petition contends that summary judgment granted by the District Court was improper (since in any event summary judgment should be a jury question --(Petition for Cert. p. 5) as was the denial of his petition for rehearing and the rejection of the suggestion for rehearing en banc, because he should have been granted a three-judge court. (Petition for Cert. p. 3) The summary portion of the petition for certiorari decries the behavior of the Ninth Circuit Court of Appeals for its dismissal of Mr. Long's appeal as frivolous; further, Petitioner's Conclusion prays for review of the decision of the Ninth Circuit Court

of Appeal's decision on the ground that authorized appellate procedure was not followed. (Petition for Cert., p. 12)

These matters raised in the petition for certiorari cannot be properly raised on certiorari. Review on certiorari does not provide a normal appellate channel in any sense comparable to the writ of error. Fay v. Nola, 372 U.S. 391 (1963). On cert, the United States Supreme Court will not consider an issue not referred to in the opinions of the courts below where the court is unsure whether the issue was presented below and whether, in any event, there is record support for the issue. Ramsey v. United Mine Workers, 401 U.S. 302 (1971); White River Lumber Co. v. Arkansas ex rel. Applegate, 279 U.S. 692 (1929); Pine Trustees v. Martin, 268 U.S. 458 (1925).

The United States Supreme Court has refused to entertain on appeal issues not properly

raised in the lower courts. Walters v. City of St. Louis, 347 U.S. 231 (1954); Yakus v. United States, 321 U.S. 414 (1944). Only in exceptional cases, and then only in those from the federal courts, will the Supreme Court of the United States consider questions on appeal which were not presented or passed upon below. McGoldrich v. Compagnie Generale Transatlantique, 309 U.S. 430 (1940); Blair v. Oesterlein Machine Co., 275 U.S. 220 (1927). This case presents no such special circumstances, especially as the issues raised in the petition are not matters properly reviewed on certiorari.

V.

CONCLUSION

It is evident from the Order of the United States Court of Appeals for the Ninth Circuit that proper appellate procedure was adhered to in Petitioner's case. (A. 4) Respondent Strand does

not believe that it is his place to defend the procedure adopted for the United States District Courts or for the United States Circuit Court of Appeals; Respondent Strand chooses not to demean the judges of those courts by demonstrating their proper administration of their offices.

Judge Strand has defended in nearly every court imaginable and prays simply that this constant harassment may cease upon a denial of certiorari by this court.

February, 1974.

Respectfully submitted,

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